

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GILBERT JESSE CHAVEZ,

Plaintiff,

v.

No. CIV-04-1424 JH/RHS

DARREN P. WHITE, SHERIFF,
BERNALILLO COUNTY SHERIFF'S OFFICE,
BERNALILLO METROPOLITAN
DETENTION CENTER,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte*, under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's civil rights complaint. Plaintiff is incarcerated, appearing pro se, and proceeding in forma pauperis. The initial partial payment will be waived. For the reasons below, Plaintiff's complaint will be dismissed.

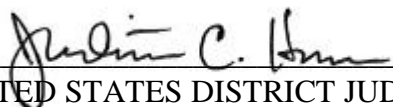
The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under §1915(e)(2) "at any time if the action . . . is frivolous or malicious; [or] fails to state a claim upon which relief may be granted." The Court also may dismiss a complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

In 2004, while Plaintiff was confined at the Bernalillo Metropolitan Detention Center during state criminal proceedings, his mother died. Family members informed Plaintiff that the judge had granted a request to transport him to her funeral. Detention Center staff never advised Plaintiff of the alleged order, and he was not transported to the funeral. He suffers mental anguish as a result and claims that Defendants' actions violated his rights under the Eighth Amendment. The complaint seeks damages.

Plaintiff's Eighth Amendment claim is precluded by a recent decision of the United States Court of Appeals for the Tenth Circuit. "Plaintiff's complaint alleges that the prison officials denied his requests for furloughs to . . . attend [his mother's] funeral. He claims that these denials violated . . . his Eighth Amendment right to be free from cruel and unusual punishment, . . . [H]owever, the allegations in his complaint do not support these claims." *Lucero v. LeMaster*, No. No. 02-2179, 2003 WL 893232, at **1 (10th Cir. March 6, 2003). Even assuming that detention center officials ignored a transport order, Plaintiff was not thereby subjected to cruel or unusual punishment. The complaint will be dismissed.

IT IS THEREFORE ORDERED that the initial partial payment toward the filing fee is WAIVED;

IT IS FURTHER ORDERED that Plaintiff's complaint is DISMISSED; and, pursuant to Fed. R. Civ. P. 58(a)(2)(A)(iii), judgment will be entered.


UNITED STATES DISTRICT JUDGE